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ABSTRACT

This paper examines congressional intent regarding the treatment of children with behavior problems and, by examining administrative and court decisions interpreting these provisions, compares those intentions with actual implementation of the mandate. It also includes a brief discussion of the research supporting use of Functional Behavioral Assessments and Positive Behavioral Interventions and Supports and identifies programs that have successfully applied these concepts. The trends and arguments highlighted here can inform the work of attorneys and advocates who represent children with emotional and behavioral disorders and policymakers who are truly committed to seeing all children succeed in school. (GCP)

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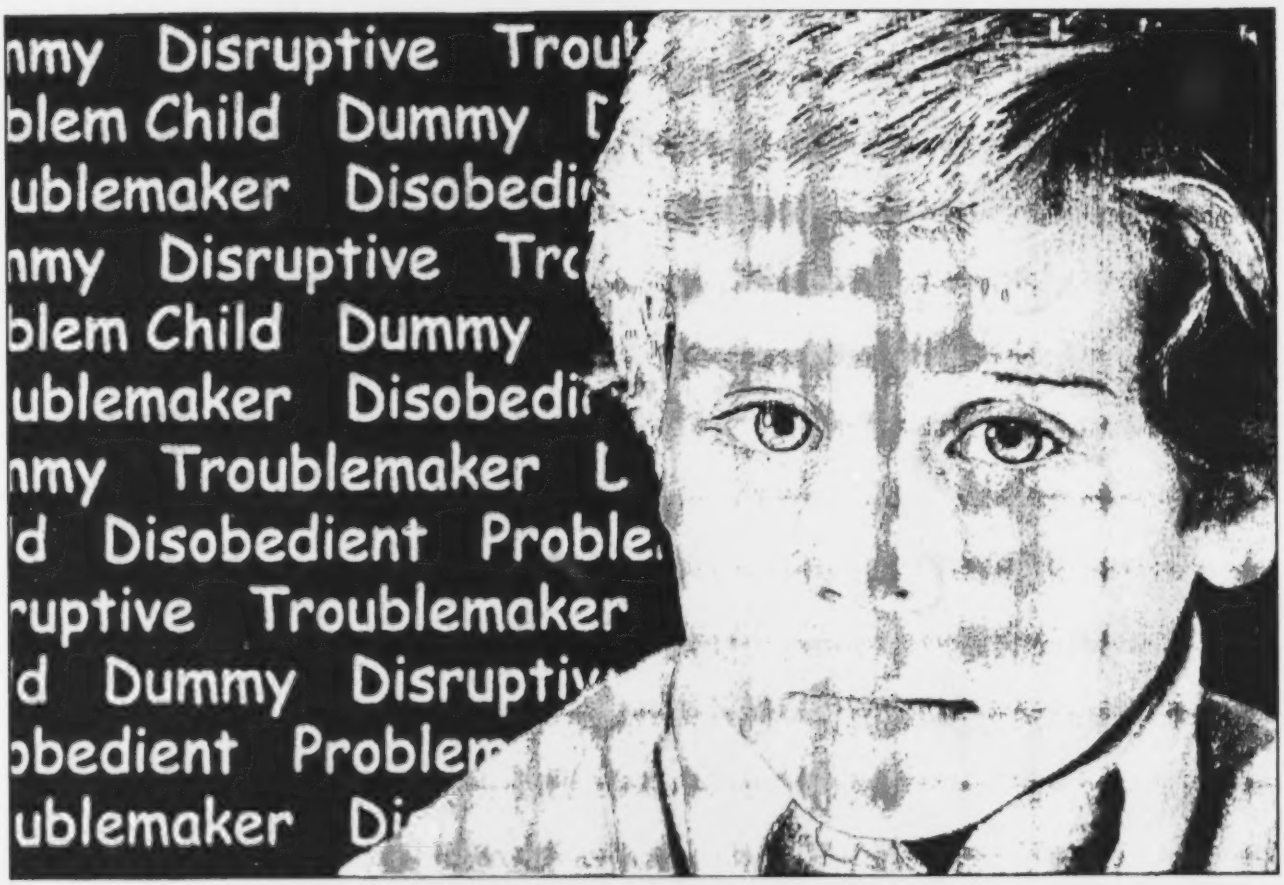

Suspending Disbelief

Moving Beyond Punishment to Promote Effective Interventions for Children with Mental or Emotional Disorders

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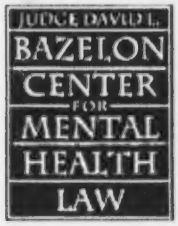

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Suspending Disbelief

Moving Beyond Punishment to Promote Effective Interventions for Children with Mental or Emotional Disorders

Research demonstrates that Functional Behavioral Assessments (FBAs) and Positive Behavioral Interventions and Supports (PBIS), when used correctly, reduce the need for traditional school discipline such as suspension and expulsion—procedures that are unsupported by research.

INTRODUCTION

In 1997, Congress amended the federal law that mandates "free and appropriate education" for all children with disabilities, the Individuals with Disabilities Education Act (IDEA). One of the most significant changes targeted services and supports for children and youth with emotional and behavioral problems. The IDEA '97, as the amendments are known, specifically mentioned two important tools for addressing these problems: Functional Behavioral Assessments (FBAs) and Positive Behavioral Interventions and Supports (PBIS). The inclusion of these concepts in the statute was both revolutionary and unremarkable—revolutionary because the federal government had never before explicitly required use of these practices, and unremarkable because professional literature reports the successful use of these techniques for more than 25 years.

Research demonstrates that FBAs and PBIS, when used correctly, reduce the need for traditional school discipline such as suspension and expulsion—procedures that are unsupported by research. Despite the evidence, however, many school districts balked at the new requirements, complaining that their personnel had neither the training nor the time to learn to implement FBAs and PBIS.

Now, six years after passage of IDEA '97, parents and advocates report that implementation of the new provisions is erratic and often perfunctory—that schools appear more concerned about the illusion of compliance than about effective use of the tools to prevent and address behavior problems. Schools are increasingly taking a different tack from the ideals espoused in the IDEA '97, using zero-tolerance and other disciplinary policies to make it easier to remove students who exhibit problem behaviors. This year's reauthorization of the IDEA has brought cries for the federal government to officially sanction such practices by eviscerating the protections for students with disabilities that are currently in the statute.

Schools are increasingly taking a different tack from the ideals espoused in the IDEA '97, using zero-tolerance and other disciplinary policies to make it easier to remove students who exhibit problem behaviors. . . . School policies that lead children to drop out are not in the best interest of either the child or the wider community.

Such an outcome would be tragic for many children. Students with mental disorders are even less likely to succeed if subjected to suspension or expulsion. A recent study found that 73 percent of youth identified with serious emotional disorders who have dropped out of school are arrested within five years.[1] Another major national study in 1991 found that 35 percent of such students were arrested within two years after leaving school.[2] In fact, the prevalence of youth with emotional disabilities is estimated to be at least three to five times greater in juvenile correctional facilities than in public schools.[3] School policies that lead children to drop out are not in the best interest of either the child or the wider community.

The present debate offers a critical opportunity to revisit the IDEA's FBA and PBIS provisions. This paper examines congressional intent regarding the treatment of children with behavior problems and, by examining administrative and court decisions interpreting these provisions, compares those intentions with actual implementation of the mandate. It also includes a brief discussion of the research supporting use of FBAs and PBIS and identifies programs that have successfully applied these concepts. The trends and arguments highlighted here can inform the work of attorneys and advocates who represent children with emotional and behavioral disorders and policymakers who are truly committed to seeing *all* children succeed in school.[4]

A NEW VISION FOR STUDENTS WITH BEHAVIORAL PROBLEMS

Prevention and Early Intervention

> The Individualized Education Program (IEP) team is required to "explore the need for strategies and support systems to address any behavior that may impede the learning of the child with the disability or the learning of his or her peers." *The Individuals with Disabilities Education Act*[5]

With the 1997 amendments, for the first time in the IDEA's 22-year history, the law explicitly mandated that school districts focus on prevention of and early intervention in problem behavior. As the U.S. Department of Education stated in its comments on the amendments' implementing regulations, "IDEA now emphasizes a *proactive* approach to behaviors that interfere with learning."[6] In response to an inquiry, the department noted that a "key provision" of IDEA '97 mandates using positive behavioral interventions and supports to help children with disabilities avoid engaging in behaviors that result in disciplinary actions and prevent their par-

ticipation in the classroom.[7] In carrying out this mandate, the department's Office of Special Education Programs (OSEP) directs school districts to take "prompt steps to address misconduct when it first appears."[8]

OSEP, in its explanation of IDEA '97's disciplinary changes, acknowledged the "widespread abuses . . . of the past" that resulted in the wholesale exclusion of children from school "merely because they had been identified as having a behavior disorder."[9] From the cases discussed below and our discussions with advocates and parents around the country, it is clear that widespread abuse is not just a practice of the past.

IDEA '97's prevention and early intervention prescriptions mean that suspension and expulsion should not be the first response to behavior problems among children with disabilities. "[W]hile Education Department regulations do permit children with disabilities to be suspended from school under some circumstances," a federal appeals court found, "the Department also instructs schools that suspension or expulsion is not normally appropriate as a first-line response to behavior problems resulting from a student's disability, even if the conduct in question violates school rules." Rather, the court continued, "the student's IEP team should address the behavior in the first instance, using suspension and other disciplinary measures only if appropriate in the context of the IEP."[10]

Similarly, a change in placement is not the only trigger for behavioral interventions. Responding to a request for clarification, OSEP wrote that "even where a change in placement does not occur, the student's IEP team must consider positive behavioral interventions, strategies and supports to address student's difficulties."[11] In its response letter, the agency emphasized that local education authorities (LEAs) have "the obligation to take appropriate steps to address behavior that interferes with the learning of the student with a disability or that of others, regardless of whether the behavior could result in a change of placement."[12]

The language of the amendments and its subsequent interpretation make it clear that Congress and the U.S. Department of Education intended that school districts anticipate behavior problems in children with disabilities and act quickly to prevent their escalation or recurrence.

"[W]hile Education Department regulations do permit children with disabilities to be suspended from school under some circumstances," a federal appeals court found, "the Department also instructs schools that suspension or expulsion is not normally appropriate as a first-line response to behavior problems resulting from a student's disability, even if the conduct in question violates school rules."

Research-Based Practices

Congress did not invent FBAs and PBIS, nor was their selection arbitrary. Rather, Congress deliberately inserted these concepts in IDEA '97 to reflect the importance of evidence-based practices in the education of children with disabilities. The legislators "believe[d] strongly that an organized, collective commitment to get validated research—best practice information—to the teacher in the classroom is essential."[13]

To help school districts implement the new mandate, the federal agency

According to the professional literature, the Functional Behavioral Assessment is an established methodology for understanding problematic behavior and the cornerstone for developing appropriate interventions.

responsible for administering the IDEA established the OSEP Technical Assistance Center for Positive Behavioral Interventions and Supports, which has several partner sites around the country.[14] These sites review and make accessible the professional literature on FBAs and PBIS, conduct research on the effectiveness of PBIS, and provide significant technical assistance at the request of school districts. One site, for example, has worked with schools to develop school-wide behavior management programs that are not limited to students with disabilities and has studied the positive impact on school-wide discipline and other beneficial effects, such as improved attendance.[15]

Ensuring that evidence-based practices were not just referenced in the law, the federal government also funded up-to-the-minute research and made it available to every school district in the country. Schools should now know not only what is required but also how to implement the requirements for the best results.

FUNCTIONAL BEHAVIORAL ASSESSMENT

What Are the Origins of FBAs and PBIS?

FBAs and PBIS are not new. According to the OSEP Technical Assistance Center, PBIS "was developed initially as an alternative to aversive interventions that were used with students with severe disabilities who engaged in extreme forms of self-injury and aggression."[16] The term "functional behavioral assessment" comes from the field of applied behavior analysis, as "the process of determining the cause (or function) of behavior before developing an intervention."[17]

The IDEA is meant to encourage schools, school districts and teachers to avoid labeling children with disabilities as "problem children" and/or disciplining children with disabilities without first identifying the roots of and possible solutions to the child's behavioral issues. According to the professional literature, the FBA is an established methodology for understanding problematic behavior and the cornerstone for developing appropriate interventions.

One expert explains FBA as "identifying the underlying cause(s) of a student's behavior." The resulting awareness of "what the student 'gets' or 'avoids' through the behavior " can enable the IEP team to develop proactive strategies "crafted to address the behaviors that interfere with academic instruction."[18]

What Constitutes a Legally Sufficient FBA?

During the comment period for the proposed regulations to implement IDEA '97, the U.S. Department of Education received requests to

define FBAs.[19] In its discussion, the department declined to further refine the statute's language and simply stated, "IEP teams need to be able to address the various situational, environmental, and behavioral circumstances raised in individual cases."[20] Thus far, as the cases cited below demonstrate, there appears a consensus that a paper review alone is insufficient and that the school must make a diligent effort to ascertain why a particular behavior occurred.

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A general paper review is inadequate.

In an early case, decided before the regulations interpreting the 1997 amendments were issued, the hearing officer held that an FBA should provide information sufficient to enable the IEP team to decide a placement appropriate to the child's needs: "The evaluation was to assess the possible conditions that lead to the alleged misconduct and to be conducted by an experienced individual."[21]

In its assessment, however, the school district focused only on the child's disability, not the behavior that led to the suspension. The district's "limited assessment" was merely a review of the previous three-year evaluation. Further, the district did not even convene an IEP meeting to develop an assessment plan. Instead, operating alone, the district's psychologist completed a proposed assessment plan and mailed it to the student's guardian. The psychologist conducted a records review focused on the student's visual and auditory disabilities without evaluating their relationship to his behavioral difficulties. Also, to address the student's anger control as a possible cause of his attempted sexual assault, the IEP team simply spoke with the student's teachers and guardians, accepted their representations and decided that an additional evaluation in this area was unnecessary.

The hearing officer found the district's FBA insufficient.

In the case of a student with learning disabilities who was suspended for allegedly buying marijuana from another student, the review officer found the school district's FBA inadequate.[22] The review officer noted that the FBA, which consisted only of a directive to the student's teacher to do a review of the student's transition plan, did not recognize the student's behavioral needs in the context of what might be required to prevent a recurrence of the misbehavior.

The review officer was looking for an indication that the district had made overtures to understand the "dimensions of the boy's behavioral problem prior to prescribing a solution." While review of a student's transition plan could be viewed as *one* component of an FBA, the review officer concluded, such a review, alone, could not substitute for a legally sufficient FBA. An FBA must include analyses of the student's actual and specific misbehavior that led to the disciplinary action, rather than simply a records review or analysis of the student's reported disability.

Where the FBA is conducted is another factor hearing officers have considered. One made the point that it is "preferable to complete a functional behavioral assessment in the environment in which a Student will normally be learning" and a setting that is consistent with the IEP.

It must show understanding of the causes of the behavior.

Even an assessment that goes beyond a paper review may be deemed inadequate. In another early case, the review officer determined that the school's one-and-a-half page report, which was based on a 70-minute, one-time classroom observation and a follow-up interview with the teacher, did not constitute a legally sufficient FBA for an eight-year old with suspected pervasive developmental disorder.[23]

While declining to set a clear legal standard for what would constitute an adequate FBA, the review officer held that the burden is on the school district to prove the adequacy of an assessment and outlined what should be involved in the process of an FBA:

> some variant of identifying the core or 'target' behavior; observing the Pupil (perhaps in different environments) and collecting data on the target behavior, antecedents, and consequences; formulating a hypothesis about the cause(s) of the behavior; developing an intervention to test the hypothesis; and collecting data on the effectiveness of the intervention in changing that behavior.

In this case, the hearing officer had had an independent FBA done. The review officer, while rejecting the district's behavioral evaluation, favorably described the independent evaluator's FBA, noting that it provided a structure for analysis of an FBA although it did not necessarily fulfill a legal requirement under the statute.

The independent evaluator's FBA included the following:

- analyses of frequency, duration, intensity, immediate ecological and behavioral antecedents to the target behavior;
- analysis of specific consequences and functions of conducting the target behavior;
- listing of alternative behaviors that serve the same function as the target behavior;
- identification of specific conditions under which alternative behaviors should be taught; and
- recommended modifications in the physical and social environments.

Observations must be conducted in the student's normal setting.

Where the FBA is conducted is another factor hearing officers have considered. One made the point that it is "preferable to complete a functional behavioral assessment in the environment in which a Student will normally be learning" and a setting that is consistent with the IEP.[24]

In a Michigan case, the hearing officer ordered that the parents were to be reimbursed for the cost of private school due to the inadequacy of an IEP that did not take into consideration the child's behavior.[25] The student

in this case was diagnosed with depression, for which he had been hospitalized on several occasions.

The hearing officer concluded that the student's inappropriate behaviors ("refusal to go to school, violent acts, and other inappropriate behaviors") should be addressed, at a minimum, by conducting an FBA. Furthermore, the FBA should be "based upon the information already gathered, going to the [student's private school], contracting with the [school] staff or others in that vicinity or a combination of these activities. Only after such an individual assessment is conducted," the hearing officer continued, will an IEP team be in a position to discuss and determine placement and decide "what type of structured environment, supports, or both, if any, are appropriate to address his acts of violence in the school setting." Previously, the district had only looked at records and conducted evaluations outside of the school setting.

The FBA must reflect professional standards.

The above cases certainly illustrate these hearing officers' understanding of the necessary components of an FBA. They also underscore the minimal effort some schools invest in developing FBAs and how little comprehension many schools have of what constitutes a useful FBA. Although the federal law provides little explicit guidance, its reference to an established methodology and the subsequent funding of technical assistance centers implies that existing professional standards must be followed. The above examples, however, demonstrate that some schools are not making any attempt to follow any recognizable standard or methodology.

In an effort to clarify the IDEA's requirement for FBAs, and in apparent recognition of the benefits they provide to educators, some states are beginning to promulgate their own regulations or guidelines, using evidence-based standards as their guide.[26] This is a positive trend, but the absence of such regulations or guidelines does not excuse a school's departure from professional standards.

When, and for Which Children, Should an FBA Be Conducted?

A. As part of initial assessment/reevaluation

The IDEA does not expressly require an FBA as part of an initial assessment or a reevaluation. However, language in the regulations supports such an obligation under certain circumstances.[27] School districts are required to utilize a "variety of assessment tools and strategies . . . to gather relevant functional and developmental information about the child."[28] In addition, the child must be "assessed in all areas related to the suspected disability, including, if appropriate, . . . social and emotional status."[29]

Specifically, the assessment instruments must "assess the relative contribution of cognitive and behavioral factors."[30] Most important, and consis-

School districts are required to utilize a "variety of assessment tools and strategies . . . to gather relevant functional and developmental information about the child." In addition, the child must be "assessed in all areas related to the suspected disability..."

Under certain circumstances, IDEA '97 explicitly requires Functional Behavioral Assessments in response to disciplinary incidents. . . . Hearing officers have concluded that FBAs are required prior to an expulsion decision and must be conducted within 10 days after ordering a change to an interim alternative setting.

tent with the cases cited above, the school district must use "assessment tools and strategies that provide relevant information that directly assists" those who will determine the child's education needs.[31] According to the professional literature discussed above, an FBA is the appropriate mechanism for gathering information with which to determine the educational needs of children who have behavior problems.

The IDEA '97 regulations also state that when developing, reviewing or revising the IEP of "a child whose behavior impedes his or her learning or that of others," the IEP team "shall... consider, if appropriate, strategies, including positive behavioral interventions, strategies [sic], and supports to address that behavior."[32] As hearing officers have concluded, FBAs are an essential precursor for an IEP to properly address behavioral issues.[33] OSEP apparently agrees, encouraging districts to take "prompt steps to address misconduct when it first appears" by conducting an FBA and determining the appropriateness of the student's current Behavioral Intervention Plan (BIP).[34]

Although schools may argue that FBAs should be part of a comprehensive assessment only for children classified under the IDEA as emotionally disturbed (ED), the regulations support such an assessment for children with all types of disabilities who demonstrate behavioral problems.[35]

B. In response to a disciplinary incident

Under certain circumstances, IDEA '97 explicitly requires FBAs in response to disciplinary incidents. The school district must convene the IEP team to develop an FBA plan and BIP (or review the existing BIP, if one has already been developed) within 10 business days of 1) first removing a child from school for more than 10 days in a school year and 2) any subsequent removal that constitutes a change in placement—i.e., the removal is "part of a series of removals that constitute a pattern because they cumulate to more than 10 school days in a school year, and because of factors such as the length of each removal, the total amount of time the child is removed, and the proximity of removals to one another."[36]

Hearing officers have concluded that FBAs are required prior to an expulsion decision[37] and must be conducted within 10 days after ordering a change to an interim alternative setting.[38]

Who Conducts the FBA?

Only two cases have been reported so far addressing who is qualified to conduct an FBA. It seems logical that the required components of an FBA would determine the necessary credentials or experience of the person who must undertake the assessment. In a reported case that did not explicitly discuss the qualifications for conducting an FBA,[39] for example, the private FBA was conducted by a child and adolescent psychologist who had exten-

sive experience working with children and youth with behavior problems in school settings.

One state department of education interprets the law as follows: "All members of the IEP team are responsible for insuring that the functional assessment is completed. Since a variety of instruments and data collection tools may be used, persons collecting the information will vary; however, a person trained in the interpretation of each instrument and/or tool is essential."[40] The department's rules listed among those typically involved in this information-gathering process "the child's general education teacher, a special education teacher, a school psychologist, a school social worker and/or a school counselor."

The reported cases do not provide much guidance about the required qualifications. One concerned a nine-year-old boy with "a complex pattern of neuropsychological, behavioral, sensory, medical, communication, and learning problems."[41] The student exhibited aggressive behaviors, which included "biting, hitting, pushing over furniture and significant verbal aggression." The hearing officer provides no specifics of the assessor's educational or professional background, but was clearly confident of his or her ability, noting that the individual conducting the FBA in this matter had performed "60 to 70 FBAs each year since 1990." The hearing officer concluded only that a BIP should be developed by a person with "appropriate behavioral expertise."

The other case,[42] involving a 13-year old student with autism, whose foster parents contested his placement at a private special services school, should serve as a warning to parents' counsel who take for granted hearing officers' deference to outside experts. The hearing officer disagreed with an independent expert's FBA, deferring to the collective experience of the current IEP team.

The independent expert's credentials included advanced degrees in special education and a role in providing technical assistance about the new IDEA, PBIS and FBA. The expert reviewed the child's records, observed him in the home and at school, and reviewed all of his IEPs. She concluded against the school district that the child could be placed in a less restrictive environment. Nonetheless, the hearing officer was unpersuaded by the expert's testimony: "The Hearing Officer cannot find that the few hours of observation and review by [the expert] should supplant the years of collective wisdom of the many involved in developing the present IEP." The opinion makes no mention of what was included in the present IEP team's FBA or of the team's background or perception of what constitutes an FBA. In the hearing officer's opinion, extensive experience with the child is more important than particular expertise with FBAs.

It's important to note that the expert's methods in this case comport with both the legal interpretation and the professional standards.

It seems logical that the required components of an FBA would determine the necessary credentials or experience of the person who must undertake the assessment.

A Behavioral Intervention Plan (BIP)...is "a proactive plan to teach replacement behaviors that match the function of problem behaviors." ...Importantly, "[i]nterventions that result in humiliation, isolation, injury and/or pain would not be considered appropriate."

POSITIVE BEHAVIORAL INTERVENTIONS AND SUPPORTS

What Is a Behavioral Intervention Plan (BIP)?

A BIP is the outline of the PBIS interventions that will be used, with information about when and how the particular interventions will come into play. Maureen A. Conroy of the University of Florida Department of Special Education defines a BIP as more than a plan to stop problem behaviors: It is "a proactive plan to teach replacement behaviors that match the function of problem behaviors."[43]

PBIS are "procedures based on understanding why challenging behavior occurs"—i.e., what function does the behavior serve to the child using it?[44] According to the OSEP Technical Assistance Center, PBIS is "first and foremost an ongoing problem-solving process." It includes assessment leading to the design of effective approaches that will reduce impeding behavior(s) and/or teach new skills and the development of "supports" to help the child maintain the resulting positive changes in behavior.[45] Importantly, "[i]nterventions that result in humiliation, isolation, injury and/or pain would not be considered appropriate."[46]

What Constitutes a Legally Sufficient BIP?

A. Elements of a BIP

According to the OSEP, a BIP:

> should include positive strategies, programs or curricular modifications, and supplementary aids and supports required to address the behaviors of concern. It is helpful to use the data collected during the FBA to develop the plan and to determine the discrepancy between the child's actual and expected behavior.
>
> Intervention plans that emphasize skills needed by the student to behave in a more appropriate manner and that provide proper motivation will be more effective than plans that simply control behavior. Interventions based on control often only suppress the behavior, resulting in a child manifesting unaddressed needs in alternative, inappropriate ways. Positive plans for behavioral intervention, on the other hand, will address both the source of the problem and the problem itself and foster the expression of needs in appropriate ways.[47]

An administrative law judge (ALJ) in Iowa listed several criteria for determining the appropriateness of a BIP, finding that a BIP:

i) must be based on assessment data;
ii) must be individualized to meet the child's needs;
iii) must include positive behavioral change strategies; and
iv) must be consistently implemented as planned and its effects monitored.[48]

Although the student in the Iowa case was experiencing regular suspensions related to disciplinary problems—and the ALJ admonished the school to find alternatives to suspension—the ALJ found the BIP in question adequate, noting that the plan "outlined positive consequences for progress toward the objectives, as well as strategies for failure to comply." Furthermore, the student "had made successful progress in the regular classroom using the interventions of the BIP."[49]

B. "Best efforts" may be sufficient.

Even where BIPs appear insufficient due to continuing behavioral issues, reported cases indicate that a school that puts forth its "best efforts" in the creation, implementation and revision of a BIP will likely be found to have acted in accordance with IDEA requirements. This is particularly likely when the student is making progress academically and/or behaviorally and the school continually evaluates and adjusts the BIP as appropriate. As the Minnesota review officer quoted on page 10 noted, although some schools might wish for quick fixes, appropriate behavioral interventions require "continued consistent work."

In a Florida case,[50] for example, the hearing officer ruled that the school board was in compliance with the IDEA regulations because it had made a concerted attempt to respond to escalation in the student's behavioral problems by modifying his IEP. Notably, the hearing officer upheld the BIP even while finding that the strategies the school employed "were not successful in controlling the student's inappropriate behaviors."

In another case,[51] a judge found that the school complied with IDEA by putting forth its "best efforts" to provide positive behavioral supports—even though the student continued to have behavioral problems. The court noted that "when the behavior component of the student's IEP appeared not to be working, the district retained two behavioral specialists to evaluate the student and redevelop the BIP if necessary." Because the behavioral plan in place had proved successful for the student "in the past, there was no reason to believe other than from hindsight, that the plan would not continue to be successful." The court also suggested that the inconsistency and unpredictable nature of the student's behavior made it impossible for the school, or the student's own parents, to gauge accurately what behavioral strategies would work "on any given day."

Increasingly, schools are attempting to write juvenile justice consequences into BIPs. Parent attorneys and advocates should strenuously object to such

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inappropriate provisions, challenging them in due process hearings if necessary.

For example, a Texas case,[52] illustrates the danger of including such punishment in a student's BIP, especially when technical violations of a BIP may not constitute a denial of the child's right to services. In this case, the student's BIP contained a provision authorizing the student's removal from school for misbehavior. The student was removed from school by the sheriff's office on at least three occasions, and his mother was frequently called to pick him up from school because of behavior problems. Work was not sent home with the student on these occasions, and the district offered no tutoring or compensatory services.

The hearing officer determined that the evaluation component of the student's BIP was inappropriate; evidence that the district failed to accurately record the number of times the student was removed from school "did not permit accurate tracking of this consequence for the purposes of evaluating the student's IEP." However, the "essentially procedural" violation did not deny the student's educational rights, the hearing officer concluded. From the decision, it appears that the parent offered little evidence to establish that the boy did not receive an educational benefit and never challenged the components of the BIP that authorized the removals, while district officials offered credible testimony that the boy was making "more than trivial progress" on both his academic and behavioral goals.

C. A BIP may not be punitive in nature.

The parent in the Texas case might have argued that the student's BIP was inappropriately punitive in nature, a charge that has been used successfully in a number of cases. In one such case in Arkansas,[53] the hearing officer found that the student was "repeatedly removed from his class by the school's principal for extended periods of time and for violations that included dress code violations. Those removals violated his stay-put BIP, which called for no expulsions from class as punishment." The hearing officer clearly indicated that these exclusions were inappropriate behavioral strategies by noting that they were not "found by his IEP team to be an appropriate response to the child's inappropriate behavior" but were "merely dictate[d] by the principal."

One BIP developed for the student "consisted of a series of progressive punishments," without listing any specific behaviors that merited such punishment. A new special education supervisor had been hired shortly before the IEP conference where this BIP was conceived. At the IEP meeting, the new supervisor "explained to the assistant principal that this was no way to develop a BIP" and "insisted that the committee at least go through the child's discipline file and list some targeted behaviors."

The hearing officer found the BIP entirely inappropriate, as it offered

no aids or services to provide social-skills training or behavior modeling. "Furthermore," the hearing officer concluded, "the child [was] being disciplined for actions for which non-disabled students were not being punished." The hearing officer noted that this uneven punishment violated the IDEA: "[A] school district cannot exclude a disabled child for even one day for an act for which such discipline is not applied to children without disabilities, even if the child's action is not a manifestation of his disabilities."

Similarly strong language can be found in an earlier Iowa case,[54] in which the hearing officer rejected a BIP for being punitive. Parents had challenged both the school district's IEP of their son and his placement in an interim setting. The hearing officer held that a BIP "should be designed in a manner consistent with providing the child with positive behavioral interventions, strategies, and supports to address the behaviors of concern."[55] The hearing officer criticized both the IEP and the BIP for "failing to provide instructive and/or supportive steps" to help the student "learn appropriate behaviors and/or when those behaviors could be used." For example, the IEP contained only one goal in the social/behavioral domain—inexplicable for a child who clearly had serious behavior problems. The district also failed to revise the student's BIP, despite documentation that his behavior was a concern and had been deteriorating for the past couple of *years*.

This hearing officer questioned the sincerity of the intervention plan's purpose, stating that "it appears this plan was developed in a perfunctory manner, perhaps to satisfy a need for a BIP." The hearing officer also found the plan punitive, in that the "steps" detailed in it involved "cueing" the student to return to task and specified consequences such as "hallway conferencing," time-out, giving up recess, or going to detention.

The hearing officer also held that implementation of the plan was not consistent with positive behavioral intervention, the linchpin of IDEA '97. For example, the student was told on numerous occasions he "needed an attitude change" or that he "owed work." Based on testimony by district personnel that the student "simply chooses not to make appropriate choices, but rather to misbehave during the school day," the hearing officer concluded that the district was grossly disregarding the student's needs.

Yet another example of an inappropriate and punitive BIP can be found in a Maine case involving a 14-year old with a learning disability who was expelled from school for violating his behavior contract.[56] The contract, prepared for the student when he was placed in an alternative education setting, included the following language: "No swearing, no use of inappropriate words, no use of inappropriate sexual references. Quotations from published songs which contain offensive, threatening or otherwise inappropriate language may not be written or spoken in school, no written, verbal or implied threatening of any person." According to the contract,

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The clearly exasperated hearing officer stated: "The IEP must specify not only goals and objectives in these areas, but also the aids, supports, and services that are going to assist the student to achieve those goals... And lastly, ...the [IEP team] must develop a behavioral intervention plan, based on informed professional input, which will provide the positive behavioral supports and incentives that the student will need to be successful in the school setting."

the consequences for engaging in the prohibited behaviors included "warnings, being sent home for the remainder of a day and in-school suspension the following day, out-of-school suspensions, and referral to the principal for possibly further disciplinary action."

The hearing officer concluded that positive behavioral interventions were not even considered in development of the plan. The hearing officer criticized the school district for not developing an appropriate behavioral plan, but creating instead an ineffective behavioral contract that simply "enumerated rules and punishments rather than assisting [the] student in developing positive behavioral replacement strategies." An IEP had been drafted for the student but it made no mention of a behavioral plan or positive behavioral supports except to say that the student had no behavioral needs "related to disability." The hearing officer held this to be a "clear violation of the IDEA" because the district could not possibly know in advance whether any future behavior by the student is, or is not, a manifestation of his disability.

Ultimately, the clearly exasperated hearing officer stated: "The IEP must specify not only goals and objectives in these areas, but also the aids, supports, and services that are going to assist the student to achieve those goals... And lastly, as I have repeatedly stressed, the [IEP team] must develop a behavioral intervention plan, based on informed professional input, which will provide the positive behavioral supports and incentives that the student will need to be successful in the school setting."

Yet another example of punitive behavioral techniques that run counter to the IDEA appears in a Missouri case.[57] Although the hearing panel noted that the provisions of IDEA '97 were not in effect when the case was decided, its decision provides an example of an inappropriate IEP that fails to take into account the importance of positive behavioral management techniques. The six-year-old student had Asperger's Disorder. The IEP contained a section pertaining to "consequences/reinforcements" to manage aggressive or assaultive behaviors. Such consequences included suspensions for hitting or kicking others. The panel, finding the IEP to be inadequate even under the "old" IDEA, observed that "behavioral problems are noted in the present levels of performance, yet there is no behavioral management plan or information about positive behavior management. Some of the goals and objectives lack measurable criteria." Further, the panel noted, "the period of isolation and suspension" involved in the suggested discipline of time out does not meet the student's individual needs.

These cases feature statements about what practices are inconsistent with the PBIS philosophy. Parent attorneys, advocates and school personnel can all refer to these strongly worded opinions and the professional literature supporting them to ensure that students with disabilities do not fall victim to the failed punishment model of behavioral intervention.

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D. Schools may not use the juvenile justice system to avoid IDEA responsibilities.

Referring students with disabilities to the juvenile justice system may reflect just another punitive approach to behavioral intervention, rather than genuine concern that a crime has been committed. The problem is illustrated by the *Watson* case in Arkansas, described above.[58] On one occasion, the child was sent home for slapping a student who had made a comment about his mother. The principal directed the assistant principal to file criminal charges against the student. Reflecting good advocacy, the student's IEP specifically barred "consultation with juvenile court or with the police with the possibility of charges being filed." The mother testified that the filing of charges was in retaliation for her refusal to stop due process proceedings.

The hearing officer ruled that the "attempt to have criminal charges filed against the student was not a legitimate call to police to maintain school safety," but was instead, "an attempt to avoid complying with the IDEA, an attempt to change the child's placement without going through the IDEA procedures which were designed to protect children with developmental disabilities from such inappropriate actions." The district was ordered to provide at least one half semester of compensatory education and to develop an appropriate BIP. The principal was ordered to stay away from the student and the district was directed to administer no punishment of any kind for certain student handbook violations.

The hearing officer ruled that the "attempt to have criminal charges filed against the student was not a legitimate call to police to maintain school safety," but was instead, "an attempt to change the child's placement without going through the IDEA procedures which were designed to protect children with developmental disabilities from such inappropriate actions."

When Should PBIS Be Considered?

IDEA '97 requires schools to take the initiative and to consider "positive behavioral interventions" when it appears that a student's behavior "impedes his or her learning or that of others."[59]

In a Texas case,[60] for example, the district court ruled that a middle school student's history of disruptive behaviors, in addition to a diagnosis of ADHD, should have made the school district aware of his possible IDEA eligibility. Based on a finding that the student qualified for, and needed, special education, the court ordered the school district to provide an appropriate IEP, including a BIP. A need for special education and related services is not limited strictly to academics, the judge ruled, but also includes behavioral progress and the acquisition of appropriate social skills. Simply because a student earns good marks and advances from grade to grade, the judge pointed out, does not necessarily mean he or she is receiving the education to which children are entitled under the IDEA.

The student in this case had been suspended (in- and out-of-school suspensions) more than 20 times. "Despite the student's academic success," the judge concluded, "he could benefit from special education services in the form of counseling, social skills training and a BIP to address

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A need for special education and related services is not limited strictly to academics, the judge ruled.... "Despite the student's academic success," the judge concluded, "he could benefit from special education services in the form of counseling, social skills training and a BIP to address the types of persistent misbehavior that resulted in his removal from the classroom."

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A case in Maine[60] similarly emphasizes that discipline of children with disabilities should be directed toward reasonably reducing the likelihood of future episodes. Here a student with continuing behavioral issues was "sent home early or simply left to his own initiative when behavioral circumstances dictated." Although the student had been identified as being in need of special education services in preschool, it was not until he was in the 7th grade that a BIP was actually created.

In concluding that the student had been denied an appropriate education under IDEA, the hearing officer noted that he was improperly "expected to comply with school rules of his own initiative [when] the evidence is clear that the student does not have the capacity for self regulation." The hearing officer ordered the IEP team "to convene within 10 days of the decision for the purpose of revising the student's IEP and BIP as necessary."

Who Should Be Involved in Developing and Implementing PBIS?

Special education staff and related-service providers with behavioral training are typically key personnel in the development and implementation of PBIS, particularly for students who are in contained classrooms. However, other school personnel have important roles to play.

IDEA '97 states that the "regular education teacher of a child with a disability, as a member of the IEP team, must, to the extent appropriate, participate in the development, review, and revision of the child's IEP, including assisting in the determination of [a]ppropriate positive behavioral interventions and strategies."[63] Inclusion of the regular education teacher may make it possible for a student to remain in or return to less restrictive educational settings.

For children with behavioral problems to be successful, everyone who works with them should be responsible for implementing their BIP in a consistent manner. A California school district's failure to work closely with an occupational therapist in implementation of a student's behavioral plan led the hearing officer to conclude that the student had been denied an appropriate education under the IDEA.[64] The decision is a clear indication that BIP implementation is not solely the responsibility of classroom teachers.

This holistic approach is supported by the behavior professionals: "A collaborative effort between parents, teachers, school psychologists, counselors and administrators is the best way to ensure positive results. All are necessary to ensure the implementation of a PBIS plan at both home and school."[65]

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PBIS IN PRACTICE

PBIS and Individual Children

The IDEA's PBIS requirement applies only to individual students, although a family may be able to obtain classroom-wide or even student-centered school-wide behavioral interventions if a student's educational needs require such an intervention. According to OSEP's Technical Assistance Center on PBIS, a significant body of research has "demonstrated the efficacy of PBIS in addressing the challenges of behaviors that are dangerous, highly disruptive, and/or impede learning and result in social or educational exclusion."[66]

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The center provides case studies of children whose behavior improved dramatically or was kept from escalating because FBAs and PBIS were used. One case study described the plight of Gary, an eighth-grader with a behavior disorder.[67] Prior to instituting positive behavioral interventions, Gary's teachers described him as "explosive, noncompliant, and unconcerned about his assignments." His behaviors were typical of those teachers might encounter in any middle school, including "off task behaviors, talking to other students during work periods, not completing work, refusal to comply with directions, negative verbal exchanges, and leaving the classroom without permission." The case study reports that Gary had received "numerous office referrals for disrupting class and not completing assignments and received 6 one-day suspensions for leaving his classroom without permission."

A behavior consultant was brought in to review the team's findings, and a plan was developed. After just one week, Gary's negative behaviors were less frequent. After six weeks, data continued to show a reduction in the problem behaviors, there were no office referrals and Gary was spending more time on task.

The Beach Center on Family and Disabilities has collected numerous success stories involving the use of PBIS. One is the account of Michael, a 7th grader who was being included in a school setting with his peers for the very first time. The transition—more challenging school work, changing teachers and classes, making new friends—was difficult, causing Michael to act out his frustrations with frequent and severe outbursts. A functional assessment revealed clues to what was causing Michael's frustrations, such as boredom or failing to understand what was expected of him. The FBA also identified "warning signs," such as stretching or yawning, that an outburst was imminent.

Michael, his teachers, other school staff, family and peers worked together to develop a PBS plan that would use his strengths to address the troubling behavior. Michael was outgoing and affectionate, so he was given

By the time he began high school, Michael was successful both in school and in the community. He worked in the school library and volunteered with a kindergarten class. . . . With positive supports in place, his uncontrollable outbursts have ceased. No longer frustrated with school, he made the Honor Roll and was recognized with a citizenship award.

the task of passing out papers to create opportunities for him to have brief—and appropriate—social contact during class. He was also allowed breaks to walk outside and to "use his muscles," a priority for Michael, assisting staff around the school. A handbook about Michael was created to help teachers and others who worked with him understand his needs and strengths. The handbook noted, for instance, that the word "okay" was a signal to Michael that his concerns and ideas had been heard. Acknowledging Michael by using "okay" kept him from becoming frustrated because he felt misunderstood or ignored.

Michael often engaged in troublesome behavior to gain peers' attention or convince them that he belonged. To address this problem, the school developed a "Circle of Friends," an organized friendship network, which gave Michael social support. The school supports the Circle of Friends with activities and an in-school discussion group; Michael's family similarly supports the group by organizing social events outside school.

By the time he began high school, Michael was successful both in school and in the community. He worked in the school library and volunteered with a kindergarten class. He earned money by buying a lawnmower and taking care of neighbors' lawns. With positive supports in place, his uncontrollable outbursts have ceased. No longer frustrated with school, he made the honor roll and was recognized with a citizenship award.

Because of the school's commitment to implement a variety of positive behavioral supports, Michael is thinking about college and appears to have a bright future—something that was in great doubt just two years ago.[71]

PBIS and School-Wide Interventions

PBIS is increasingly promoted as a school-wide intervention to create an environment in which all students—not just those with disabilities—understand what is expected and are taught how to conform their behavior accordingly, and the school culture recognizes and reinforces the desired behavior. Project ACHIEVE, developed at the University of South Florida, is a school-wide behavior management program that has received many accolades.[68] The Stop & Think Social Skills Program teaches all school staff, including after-school activity leaders, to implement a series of hand gestures and verbal cues that provide structure for students' decision-making skills.

The university has conducted longitudinal studies from three schools that have implemented Project ACHIEVE's social skills and discipline/management component. The schools involved are Jesse Keen Elementary School in Polk County (Lakeland), Florida; Cleveland Elementary School in Hillsborough County (Tampa), Florida; and Hotchkiss Elementary School in the Dallas (TX) Independent School District. The results were impres-

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sive. Comparing Jesse Keen's data during the year prior to Project ACHIEVE implementation with the averages from eight years of project implementation, the following results occurred:

- Special education referrals decreased 61 percent.
- Special education placements decreased 57 percent.
- Overall discipline referrals to the office decreased 16 percent.
- School-based discipline referrals to the office decreased 10 percent.
- School bus discipline referrals to the office decreased 26 percent.
- Out-of-school suspensions decreased 29 percent.
- Grade retentions decreased 47 percent.

Other school-wide PBIS programs have found similar success.

It is not necessary for schools to use "off-the-shelf" behavior management programs like Project ACHIEVE. As demonstrated in Indiana, schools can design their own effective programs.[69] Beginning with the 2000-2001 school year, Indiana identified five schools for pilot programs to address discipline issues for children with and without disabilities. Each school in the program worked with Indiana University to develop a unique plan that attempted to invoke the spirit of IDEA '97 by applying a positive approach to reduce suspensions, expulsions and other disciplinary incidents. Benefits accrued to all children, reducing overall out-of-school suspensions by 40 to 60 percent. Children with disabilities benefitted as well, with one school reducing suspensions of special education students from 39 in the year prior to the project to none in the first year of the project. In one school, Owen Valley High, the number of special education students suspended fell by over 70 percent, and expulsions went from 5 to 0.

The director of the project at Indiana University testified before Congress that the greatest visual effect of the intervention was disappearance of the usual line of chairs in front of the principal's office for students with disciplinary referrals. He concluded his testimony with the following observation:

> Our best research, as well as the experience of forward looking schools like Owen Valley High School, tells us that school discipline, for any child, disabled or non-disabled, ought to de-emphasize those procedures like suspension and expulsion that reduce educational opportunity, especially for minority students. Instead, schools that are most effective in preserving safety and improving student behavior have learned to use empirically validated prevention practices that seek to keep all students in school, and teach both disabled and non-disabled students what they need to know to avoid violence, to get along with their peers, and to succeed in school and society.[70]

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CONCLUSION

IDEA '97 promised much for children with emotional and behavioral disorders but most school districts have yet to deliver.[72] FBAs and PBIS have rewarded the schools and teachers who have embraced Congress' vision—and their students—with fewer behavioral problems and an atmosphere of learning instead of constant power struggles.

As the case law illustrates, for students with disabilities who are not fortunate enough to attend such schools, the school year is often a downward spiral of escalating punishment, fostering continued failure rather than teaching the skills to succeed. Teachers who rely on unproven and punitive measures to address behavior problems often feel as if they, too, are constantly failing, because they do not have the tools to help their most challenging students succeed.

Rather than undermining the IDEA's thoughtful and effective approach to addressing behavioral problems in children with disabilities, Congress should support and strengthen the emphasis in the 1997 law on a proactive and preventive approach. Parents and their attorneys, advocates, principals and teachers should familiarize themselves with both the law and the current research on FBAs and PBIS and insist that these approaches be employed as Congress intended. If FBAs and PBIS are used thus, students with behavioral problems have a far greater chance of succeeding in school—and with it, a much better chance to succeed in life.

NOTES

1. Garfinkle, L. (1977, Spring), Youth with disabilities in the justice system: Integrating disability specific approaches. *Focal Point* 11 (1), 21-23.

2. SRI International (1991), *Youth with Disabilities: How Are they Doing? The First Comprehensive Report from the National Longitudinal Transition Study of Special Education Students.* CA:Menlo Park.

3. Leone, P.E., & Meisel, S. (1997), Improving education services for students in detention and confinement facilities. *Children's Legal Rights Journal*, 71 (1), 2-12..

4. This paper should not be used as a substitute for legal research in specific cases. Due to time lags between writing and distribution, additional cases may have been decided in the interim. The cases in this paper have been compiled to highlight trends and arguments and do not represent an exhaustive case list. The paper should not be used to address individual legal concerns.

5. *20 U.S.C. § 614(d)(3)(B)(i).*

6. U.S. Department of Education, comments on IDEA '97 regulations, 64 Fed. Reg. 48, 12 618 (1999) (emphasis added).

7. *Letter to Anonymous*, 30 IDELR 707 (June 16, 1998).

8. *OSEP Memorandum*, 26 IDELR 981(Sept.19, 1997).

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9. 64 Fed. Reg. 48, 12414 (1999)(citing *Mills v. Bd. of Educ. of the District of Columbia*, 348 F. Supp. 866 (D.D.C. 1972), a case co-counseled by the Bazelon Center when it was known as the Mental Health Law Project).

10. *Independent Sch. Dist. No. 284 v. A.C.*, 258 F.3d 769, 776 (8th Cir. 2001)(citations omitted).

11. *Letter to Osterhout*, 35 IDELR 9 (2000).

12. *Id.*

13. H.R. Rep. No. 105 95 (1997).

14. OSEP Technical Assistance Center on Positive Behavioral Interventions and Supports is administered by the University of Oregon in Eugene. See www.pbis.org/english/index.html. The four additional partners include the Beach Center on Families and Disability at the University of Kansas, www.lsi.ukans.edu/beach/pbs.html, the University of Kentucky, the University of Missouri and the University of South Florida.

15. The University of Oregon's program has assisted the Eugene, Oregon School District 4J with establishing its Effective Behavioral Support program in schools throughout the district. For more information, see www.4j.lane.edu/ess/ebs/.

16. OSEP Technical Assistance Center on Positive Behavioral Interventions and Supports, www.pbis.org/english/About_the_Center.htm.

17. Stephen Starin, Ph.D., Functional Behavioral Assessments: What, Why, Where, When and Who? (last visited September 17, 2002) www.wrightslaw.com/info/discipl.fab.starin.htm.

18. Center for Effective Collaboration and Practice, *Why Functional Behavioral Assessments Are Important* (last modified January 18, 1998) http://cecp.air.org/fba/problembehavior/necessary.htm.

19. See 64 Fed. Reg. 48,12620 (1999).

20. *Id.*

21. *Hacienda La Puente Unified Sch. Dist. (California)*, 30 IDELR 105 (1999).

22. *Board of Educ. of the Akron Cent. Sch. Dist. (Ohio)* 28 IDELR 909 (1998).

23. *Independent Sch. Dist. No. 2310 (Minnesota)*, 29 IDELR 330 (1998).

24. *Independent Sch. Dist. No. 831 (Minnesota)*, 32 IDELR 163 (1999). See also *Independent Sch. Dist. No. 831 (Minnesota)*, 32 IDELR 163 (1999)(same holding).

25. *Birmingham Pub. Schs. (Michigan)*, 29 IDELR 765 (1998).

26. See, e.g., *Cumberland Sch. Dist. (Wisconsin)*, 35 IDELR 269 (2001)(According to state law "an FBA is a continuous process (not a one-time event) for identifying (1) the purpose or function of the behavior; (2) the variables that influence the behavior; and (3) the components of an effective behavioral intervention plan."). See, e.g., Colorado Department of Education, *Functional Behavioral Assessment and Behavior Intervention Plans* (last modified January 2001) www.cde.state.co.us/cdesped/fncfaq.htm.

27. OSEP has also recognized that FBAs can be part of initial assessments and reevaluations. In *Letter to Scheinz*, 34 IDELR 34 (June 7, 2000), OSEP stated that 1) the FBA at issue, which was conducted for the purpose of developing an IEP, meets the definition of "evaluation"; 2) parents are entitled to an Independent Educational Evaluation at public expense if they disagree with the FBA; and 3) the Agency supported the decision by the IEP team to conduct an FBA as part of IEP development, stating that "the IDEA Amendments of 1997 make provisions for public agencies to be proactive in addressing the needs of children whose disabilities have behavioral components").

28. 34 C.F.R. §300.532(b).

29. 34 C.F.R. §300.532(g).

30. 34 C.F.R. §300.532(i).

Rather than undermining the IDEA's thoughtful and effective approach to addressing behavioral problems in children with disabilities, Congress should support and strengthen the emphasis in the 1997 law on a proactive and preventive approach.

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31. 34 C.F.R. §300-532(j).

32. 34 C.F.R. §300.346.

33. See *Jim Thorpe Area Sch. Dist. (Pennsylvania)*, 29 IDELR 320, at n. 42 (1998)(providing individualized reinforcement mechanisms in a student's behavioral management plan is "not sufficient without a showing that the IEP team implemented the required prior step, which is essentially a *functional behavioral assessment*, to identify the specific contributing factors that form the basis for the design of the individual behavior management plan")(emphasis added); *Birmingham Pub. Schs. (Michigan)*, 29 IDELR 765 (1998)(finding that district must conduct appropriate FBA as a necessary component of developing an appropriate IEP and placement for student whose depression interfered with school attendance and resulted in other inappropriate behavior).

34. *OSEP Memorandum*, 26 IDELR 981 (Sept. 19, 1997).

35. 34 C.F.R. §300.532(h)("In evaluating each child . . . [education agencies must ensure that] the evaluation is sufficiently comprehensive to identify all of the child's special education and related services needs, whether or not commonly linked to the disability category in which the child has been classified.").

36. 34 C.F.R. §§300.519-20. See also 64 Fed. Reg. 48,12619 (1999)(describing change to final IDEA '97 regulations).

37. *In Re: Student with a Disability (Connecticut)*, 30 IDELR 113 (1999).

38. *Independent Sch. Dist. No. 279, Osseo Area Sch. (Minnesota)*, 30 IDELR 645 (1999).

39. *District of Columbia Public Schools*, 28 IDELR 401 (1998)(ordering school district to reimburse grandparent for cost of privately obtained FBA when district failed to develop an FBA after deciding to take disciplinary action).

40. Colorado Department of Education, *Functional Behavioral Assessment and Behavior Intervention Plans* (last modified January 2001) www.cde.state.co.us/cdesped/fncfaq.htm.

41. *Wachusett Reg'l Sch. Dist. (Massachusetts)*, 36 IDELR 23 (2002).

42. *East Cent. Kansas Special Educ. Coop. (Kansas)*, 31 IDELR 256 (1999).

43. See Maureen A. Conroy, *Functional Behavioral Assessments and Behavioral Intervention Plans*, Presented at the NAPAS Conference Education and Youth Track, June 28, 2002.

44. OSEP Technical Assistance Center on PBIS, www.pbis.org/english/About_the_Center.htm.

45. *Id.*

46. *Id.*

47. OSEP, *Functional Behavior Assessment and Behavior Intervention Plans*, ERIC/OSEP Digest E571, www.ed.gov/databases/ERIC_Digests/ed429420 (last visited September 17, 2002).

48. *Mason City Sch. Dist. and Northern Trails Area Educ. Agency 2 (Iowa)*, 36 IDELR 50 (2001).

49. See also *Hot Springs School Dist.*, 33 IDELR 20 (N.D. Cal. 2000)(denial of FAPE found where the IEP "list[ed] only the child's behavior problems and [did] not address his need for a behavior management plan.").

50. *School Bd. of Indian River County (Florida)*, 33 IDELR 57 (2000).

51. *School Bd. of Collier County v. K.C.*, 34 IDELR 89 (M.D. Fla. 2000), *aff'd*, 285 F.3d 977 (11th Cir. 2002).

52. *Goliad Indep. Sch. Dist.*, 34 IDELR 133 (2001).

53. *Watson Chapel Sch. Dist. (Arkansas)*, 35 IDELR 288 (2001).

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54. *Mason City Community Sch. Dist., (Iowa)*, 32 IDELR 216 (2000)

55. The ALJ also cited *Hempfield Sch. Dist.*, 28 IDELR 509 (1998), which held that, regardless of other accommodation efforts, "a behavior plan that responds negatively to inappropriate behaviors arising from disability conditions and ignores teaching alternative coping skills cannot be endorsed."

56. *Westbrook Sch. Dept. (Maine)*, 32 IDELR 251 (2000).

57. *Windsor C-1 Sch. Dist. (Missouri)*, 29 IDELR 170 (1998).

58. *Watson Chapel Sch. Dist. (Arkansas)*, 35 IDELR 288 (2001).

59. 34 C.F.R. §300.346. See *OSEP Memorandum*, 26 IDELR 981 (Sept. 19, 1997)(OSEP encourages districts to take "prompt steps to address misconduct when it first appears" by conducting an FBA and determining the appropriateness of the student's current BIP); *Jim Thorpe Area Sch. Dist. (Pennsylvania)*, 29 IDELR 320, at n. 42 (1998)(providing individualized reinforcement mechanisms in a student's behavioral management plan is "not sufficient without a showing that the IEP team implemented the required prior step, which is essentially a functional behavioral assessment, to identify the specific contributing factors that form the basis for the design of the individual behavior management plan"); *Birmingham Pub. Schs. (Michigan)*, 29 IDELR 765 (1998)(finding that district must conduct appropriate FBA as a necessary component of developing an appropriate IEP and placement for student whose depression interfered with school attendance and resulted in other inappropriate behavior).

60. *Venus Indep. Sch. Dist. v. Daniel S.*, 36 IDELR 185 (N.D. Tex. 2002).

61. See also *Mobile County Public Sch. System*, 34 IDELR 198 (3d Cir. 2001)("the incidents of the student's misbehavior and his disciplinary infractions should have alerted the district that a referral for an eligibility evaluation was warranted."); *Hot Springs Sch. Dist.*, 33 IDELR 20 (N.D. Cal. 2000)(failure to evaluate a student who continually exhibits serious behavioral issues will constitute and denial of FAPE under the IDEA); *Liberty County Sch. System*, 31 IDELR 176 (W.D. Mich. 1999)(where the "record contain[ed] ample evidence that [the] student exhibited behavioral and learning problems from the inception of his school experience," the judge ordered District to convene IEP meeting, conduct an FBA, and design a BIP).

62. *Augusta Sch. Dept*, 26 IDELR 229 (2001).

63. 34 C.F.R. §300.346(d). *Letter to Williams*, 33 IDELR 249 (March 24, 2000)("As an IEP team member, the regular education teacher of the child, in particular, ***must assist in the determination of appropriate positive behavioral interventions and strategies*** for the child, and supplementary aids and services, program modifications or supports for school personnel that will be provided for the child, consistent with §300.347(a)(3).").

64. *Poway Unified Sch. Dist. (California)*, 34 IDELR 79 (2000).

65. OSEP Technical Assistance Center on PBIS, www.pbis.org/english/About_the_Center.htm.

66. www.pbis.org/english/individual_support.htm.

67. OSEP Technical Assistance Center on PBIS, www.pbis.org/files/Show_school_based_FBA_case1.doc.

68. Project ACHIEVE, Dr. Howard M. Knoff, Director, Institute for School Reform, Integrated Services, and Child Mental Health and Educational Policy, www.coedu.usf.edu/projectachieve.

69. Any behavior management program, whether off-the-shelf or individually designed, should be evaluated to determine its effectiveness. Most university-developed programs offer or even require evaluation as part of the program so they can collect data and modify the programs as necessary to achieve success.

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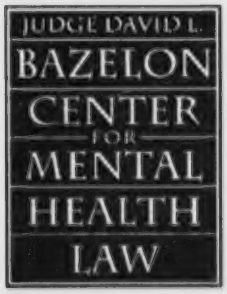
70. ***State and Local Level Special Education Programs that Work and Federal Barriers to Innovation: Hearing Before the Subcomm. on Education Reform of the House Comm. on Education and the Workforce***, 107th Cong. (2002)(statement of Dr. Russell Skiba, Director, Safe and Responsive Schools Project, Indiana University)(visited May 2, 2003) http://edworkforce.house.gov/hearings/107th/edr/idea5802/skiba.htm.

71. This story was told to the Beach Center through The Family Connection phone service. (Visited on May 2, 2003) www.pbis.org/english/Success_Stories.htm.

72. Bazelon Center for Mental Health Law, ***Failing to Qualify: The First Step to Failure in School?*** January 2003 Issue Brief. www.bazelon.org/issues/education/publications/failingtoqualify.



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